A

LEE HENG MOY

v.

JOHN HANCOCK LIFE INSURANCE (MALAYSIA) BHD & ANOR

B

COURT OF APPEAL, PUTRAJAYA
MOHD GHAZALI YUSOFF FCJ
ABU SAMAH NORDIN JCA
WAN ADNAN MUHAMAD JCA
C [CIVIL APPEAL NO: W-02-1248-2004]
9 SEPTEMBER 2009

INSURANCE: *Life insurance - Construction of policy - Competing claims on sum insured - Whether appellant or second respondent lawful beneficiary*
D *of policy - Intention of deceased - Insurance Act 1996, ss. 163(1), (2), 165, 166(3), 167(1) - Civil Law Act 1956, s. 23*

CIVIL LAW ACT: *Insurance - Life insurance policy - Competing claims on sum insured - Whether appellant or second respondent lawful beneficiary*
E *of policy - Intention of deceased - Insurance Act 1996, ss. 163(1), (2), 165, 166(3), 167(1) - Civil Law Act 1956, s. 23*

The deceased took a policy of life insurance ('policy'), effected under s. 23 of the Civil Law Act 1956, with the first respondent, naming the second respondent, whom he described as his wife, as
F the beneficiary. The deceased subsequently passed away, and the appellant made a claim on the sum insured on the ground that she was the deceased's lawful wife. The second respondent also made a similar claim on the insured sum. The matter was then referred to court by the first respondent. The appellant deposed that she was
G the deceased's lawful wife and exhibited her marriage certificate as proof of her marriage to the deceased. She claimed that the second respondent was not entitled to the insured sum and that it should form part of the deceased's estate. The second respondent did not dispute the appellant's marriage to the deceased but claimed that
H she was the beneficiary named in the policy and had been nominated as a joint trustee with the deceased of all moneys under the policy. She further claimed that she was the deceased's second wife. The learned judge held that the second respondent, although not the lawful wife of the deceased, was the lawful beneficiary of the
I policy by virtue of the Insurance Act 1996 ('Act'). Hence, the

present appeal by the appellant in which the sole issue was who was entitled to the insured sum under the policy taken out by the deceased upon his death.

Held (dismissing the appeal with costs)
Per Abu Samah Nordin JCA delivering the judgment of the court:

(1) The learned judge's decision that the second respondent was the lawful beneficiary of the policy was correct. On the facts, the policy was issued pursuant to the proposal form submitted by the deceased, whose intention was very clear. He had, in no uncertain terms, named the second respondent as the beneficiary of the policy. He had signed the proposal form witnessed by the insurer's agent, who happened to be the second respondent. There was nothing wrong with that as s. 163(2) of the Act only prohibits the nominee from being a witness to her own nomination, and there was another person who witnessed the nomination. Section 166(3) of the Act allows the insured to appoint trustees of the policy moneys, which the deceased did by appointing himself and the second respondent as joint trustees of the policy moneys. Paragraph D of the proposal form stated further that the trustees shall have the power to receive the policy moneys. Thus, what the deceased did was consistent with and not contrary to ss. 163(1), (2), 165 and 166(3) of the Act. The second respondent, being the nominee, had made her claim with proof of the deceased's death. However, the second respondent was not the deceased's lawful spouse and, as such, s. 167(1), and not s. 166(1)(a), of the Act was applicable. In view of that section the second respondent, as the nominee under the policy, holds and receives the policy moneys as an executor and not solely as a beneficiary, and any payment to the nominee shall form part of the deceased's estate and be subject to the deceased's debts. (paras 12-14)

Bahasa Malaysia *Translation Of Headnotes*

Si mati telah mengambil suatu polisi insurans nyawa ('polisi'), dibuat di bawah s. 23 Akta Undang-Undang Sivil 1956, dengan responden pertama, dan menamakan responden kedua, yang beliau katakan adalah isterinya, sebagai benefisiari. Si mati kemudiannya meninggal dunia, dan perayu membuat suatu tuntutan atas jumlah yang diinsurkan atas alasan beliau adalah isteri si mati mengikut

undang-undang. Responden kedua juga membuat tuntutan yang serupa atas jumlah yang diinsurkan. Perkara itu kemudiannya dirujuk ke mahkamah oleh responden pertama. Perayu memberikan keterangan bahawa beliau merupakan isteri si mati mengikut undang-undang dan menunjukkan sijil perkahwinannya sebagai bukti perkahwinannya kepada si mati. Beliau mendakwa bahawa responden kedua tidak berhak mendapat jumlah yang diinsurankan dan ia sepatutnya dijadikan sebahagian dari estet si mati. Responden kedua tidak mempertikaikan perkahwinan perayu kepada si mati tetapi menghujah bahawa beliau adalah benefisiari yang dinamakan dalam polisi dan telah dilantik sebagai pemegang amanah bersama dengan si mati kesemua wang di bawah polisi. Beliau juga mendakwa bahawa beliau merupakan isteri kedua si mati. Yang arif hakim mendapati bahawa responden kedua, walaupun bukan isteri si mati mengikut undang-undang, adalah benefisiari polisi mengikut undang-undang menurut Akta Insurans 1996 ('Akta'). Oleh yang demikian, rayuan semasa oleh perayu di mana isu tunggal merupakan siapa yang berhak mendapat jumlah yang diinsurkan di bawah polisi yang diambil oleh si mati atas kematian beliau.

Diputuskan (menolak rayuan dengan kos)
Oleh Abu Samah Nordin HMR menyampaikan penghakiman mahkamah:

(1) Keputusan yang arif hakim bahawa responden kedua adalah benefisiari polisi mengikut undang-undang ialah betul. Berdasarkan fakta-fakta, polisi telah dikeluarkan menurut borang cadangan yang diserahkan oleh si mati, yang niatnya sungguh jelas. Beliau telah, dalam terma-terma yang nyata, menamakan responden kedua sebagai benefisiari polisi. Beliau telah menandatangani borang cadangan disaksikan oleh agen penanggung insurans, iaitu responden kedua. Tidak ada apa-apa yang salah dengan itu kerana s. 163(2) Akta hanya melarang penama dari menjadi saksi penamaannya sendiri, dan terdapat seorang lagi yang telah menyaksikan penamaan tersebut. Seksyen 166(3) Akta membenarkan pihak yang diinsurankan melantik pemegang-pemegang amanah wang polisi, yang si mati telah melakukan dengan melantik dirinya sendiri dan responden kedua sebagai pemegang-pemegang amanah wang polisi. Perenggan D borang cadangan lagi menyatakan bahawa pemengang-pemegang amanah akan mempunyai kuasa untuk menerima wang polisi. Oleh itu, apa yang dilakukan oleh si

mati adalah konsisten dengan dan bukan bertentangan kepada ss. 163(1), (2), 165 dan 166(3) Akta. Responden kedua, yang merupakan penama, telah membuat tuntutannya dengan bukti kematian si mati. Walau bagaimanapun, responden kedua bukan isteri si mati mengikut undang-undang dan, oleh itu, s. 167(1), dan bukan s. 166(1)(a), Akta digunapakai. Memandangkan seksyen tersebut responden kedua, sebagai penama di bawah polisi, memegang dan menerima wang polisi sebagai wasi dan bukan sahaja sebagai benefisiari, dan apa-apa bayaran kepada penama akan membentuk sebahagian estet si mati dan akan tertakluk kepada hutang-hutang si mati.

Legislation referred to:
Civil Law Act 1956, s. 23
Insurance Act 1996, ss. 163(1), (2), 165, 166(1)(a), (3), 167(1)
Law Reform (Divorce and Marriage) Act 1976, ss. 5, 6(1)
Rules of the High Court 1980, O. 17

For the appellant - In person
For the 1st respondent - SY Ng; M/s Raja Darryl & Loh
For the 2nd respondent - In person

[Appeal from High Court, Kuala Lumpur; No: S6-24-1790-2003]

Reported by Suresh Nathan

JUDGMENT

Abu Samah Nordin JCA:

[1] This appeal raises an interesting point of law. The facts are rather fascinating although they are not in dispute other than the marital status of the second respondent. The sole question in this appeal is this. Who is entitled to the insured sum under the life insurance policy No. 96291-0 taken out by the insured upon his death?

[2] The facts can be shortly stated as follows. One Tan Hock Low ('deceased'), during his lifetime took a policy of life insurance with John Hancock Life Insurance (Malaysia) Berhad ("the first respondent"). In the proposal form the deceased named one Gan Chew Wan, ("the second respondent") as the beneficiary and described her as his wife.

[3] The endorsements in the policy state that the policy is effected under s. 23 of the Civil Law Act 1956 ("CLA 1956") for the benefit of the beneficiary ie, the second respondent as the wife of the deceased. The endorsements also state that the insured appoints himself and the second respondent as trustees of all moneys payable under the policy. Section 23 of the CLA 1956 provides that a policy of insurance effected by a man on his own life and expressed to be for the benefit of his wife shall create a trust in favour of the objects therein named and the moneys payable under such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to his or her debts.

[4] The policy is dated 3 June 1995 and expires on 3 June 2015. The deceased passed away on 2 January 2003 due to multiple gunshot injuries. By a letter dated 10 February 2003, the appellant made a claim on the sum insured on the ground that she is the lawful wife of the deceased. This was followed by another letter dated 24 February 2003 from her then solicitors, Messrs Rama Velu & Associates to the first respondent informing the latter that they have been instructed by the appellant, as the lawful wife of the deceased, to apply for a grant of Letters of Administration to administer the estate of the deceased and that the insured sum should not be paid out to any other person if the beneficiary nominated by the deceased is other than the appellant.

[5] On 19 February 2003 the second respondent made a similar claim on the insured sum through her then solicitors, Messrs Wong & Associates. On 27 February 2003, her solicitors wrote another letter to the first respondent asking the latter to pay the insured sum to them as solicitors for the second respondent, being the beneficiary of the policy of insurance.

[6] The first respondent was thus confronted with two competing claims to the insured sum amounting to RM352,229.39. The first respondent could have decided on their own and release the insured sum to the second respondent. But they did not want to take the risk. So they decided to take a safer course by filing an interpleader summons under O. 17 of the Rules of the High Court 1980 requesting both claimants to come to court and state the circumstances and particulars of their respective claims to the insured sum and that they be bound by whatever order that the court may make.

[7] Both the appellant as well as the second respondent filed their respective affidavits stating the basis of their claims to the insured sum. The appellant deposed that she was the lawful wife of the deceased and exhibited her marriage certificate dated 9 October 1991 as proof of her marriage to the deceased. She claimed that the second respondent was not entitled to the insured sum and that it should form part of the estate of the deceased and be shared among the lawful beneficiaries.

[8] The second respondent did not dispute the appellant's marriage to the deceased but claimed that she is the beneficiary named in the policy and had been nominated as a joint trustee with the deceased of all the moneys under the policy. She further claimed that she is the second wife of the deceased and had gone through a marriage according to the deceased's personal law. She exhibited an undated photograph of her wedding with the deceased. By virtue of their marriage, they have been blessed with three children.

[9] The learned judge held that the second respondent was the lawful beneficiary of the policy of insurance by virtue of the Insurance Act 1996 ("Insurance Act"). He was of the view that s. 23 of the CLA 1956 and s. 166(1) of the Insurance Act did not apply as the second respondent was not the lawful wife of the deceased simply because the deceased could not, under s. 5 of the Law Reform (Divorce and Marriage) Act 1976 contract a valid marriage during the subsistence of his first marriage to the appellant. Section 6(1) of the Law Reform (Divorce and Marriage) Act 1976 declares that a marriage contracted in contravention of s. 5 shall be void.

[10] The learned judge held that s. 23 of the CLA 1956 does not affect the operation of the Insurance Act. The description of the second respondent as the wife is immaterial to a nomination under the Insurance Act. Section 163(1) of the Insurance Act allows the insured to nominate a natural person to receive policy moneys payable upon his death by giving the requisite notice in writing to the insurer, which the deceased did in this case. Section 165 of the Insurance Act further provides that where a policy owner dies having made a nomination, the insurer shall pay the policy moneys to the nominee upon receipt of such claim and proof of death of the insured. The learned judge was of the view that the provisions of section 163 and 165 of the Insurance Act make it clear that the

beneficiary of a policy of insurance is not confined to a wife. As the deceased had in fact nominated the second respondent, she was therefore the lawful beneficiary of the policy of insurance.

[11] Being dissatisfied with the High Court decision, the appellant appealed to this court. Before us, both the appellant and the second respondent appeared in person without the benefit of counsel. They did however file written submissions. We had nevertheless the benefit of learned counsel for the first respondent who gave her neutral opinion as an uninterested party. She was of the view that the insured sum should be paid to the second respondent as she is the nominated beneficiary of the policy of insurance.

[12] Upon hearing the parties and after having considered the relevant provisions of the Insurance Act, the CLA 1956 and the Law Reform (Divorce and Marriage) Act 1976 and after scrutinizing the terms of the policy and the proposal form, we agree with the decision of the learned judge that the second respondent is the lawful beneficiary of the policy of insurance. The policy was issued pursuant to the proposal form submitted by the deceased. The deceased's intention was very clear. He had, in no uncertain terms, named the second respondent as the beneficiary of the policy of insurance. He had signed the proposal form witnessed by the insurer's agent, who happened to be the second respondent.

[13] But there is nothing wrong with that as s. 163(2) of the Insurance Act only prohibits the nominee from being a witness to her own nomination. The nomination was witnessed by another person. Section 166(3) of the Insurance Act allows the insured to appoint trustees of the policy moneys, which the deceased did by appointing himself and the second respondent as joint trustees of the policy moneys. This can be seen from the proposal form itself. The proposal form further spells out the power of trustees. In para. D of the proposal form it is stated that the trustees shall have the power to receive the policy moneys. In our view what the deceased did was consistent with and not contrary to ss. 163(1) and (2), 165 and 166(3) of the Insurance Act.

[14] We are of the view that under s. 163(1) of the Insurance Act an insured person who has attained the age of eighteen years is free to nominate a natural person, not necessarily his wife or spouse, to receive policy moneys payable under the policy of insurance upon his death. Where such nomination had been made in accordance

with the Insurance Act, the insurer shall by virtue of s. 165(1) of the same pay the policy moneys of the deceased according to the direction of the nomination, upon receipt of a claim by the nominee with proof of the deceased's death. In this case the second respondent, being the nominee, had made her claim with proof of the deceased's death. We note however that the second respondent is not the lawful spouse of the deceased. As such s. 166(1)(a) of the Insurance Act is inapplicable. The applicable section is s. 167(1) of the Insurance Act. In view of that section the second respondent, as the nominee under the policy holds and receives the policy moneys as an executor and not solely as a beneficiary and any payment to the nominee as such shall form part of the estate of the deceased and be subject to the deceased's debts.

[15] In the premises the appellant's appeal was dismissed with costs. The judgment of the High Court that the second respondent is the lawful beneficiary was affirmed. We also ordered that the deposit be paid to the respondents to account of taxed costs.